

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ 176-3060
Administrative Law Judge Division
March 27, 2001

R E S O L U T I O N

RESOLUTION ALJ 176-3060. Ratification of preliminary determinations of category for proceedings initiated by application. The preliminary determinations are pursuant to Article 2.5, Rules 4, and 6.1 of the Commission's Rules of Practice and Procedure. (See also Rule 63.2(c) regarding notice of assignment.)

The Commission's rules and procedures which implement the requirements of Senate Bill (SB) 960 (Leonard, ch. 96-0856) are, for the most part, found in Article 2.5 of our Rules of Practice and Procedure. The rules and procedures were adopted by the Commission in D.97-11-021, which describes more fully the background to the development of these rules. Rule 4 describes the formal proceedings to which the SB 960 rules (Article 2.5) apply. Rule 6.1 requires the Commission to preliminarily determine a proceeding's category, whether the proceeding requires a hearing, and designate an Assigned Commissioner and Administrative Law Judge. Rule 6.1(a) states that the preliminary determination of category is not appealable but shall be confirmed or changed by Assigned Commissioner's ruling. Unless and until a preliminary determination is changed by such ruling, the preliminary determination of category governs the applicability of the other reforms that SB 960 requires. Rule 63.2 provides for petitioning the Commission to reassign a proceeding to another administrative law judge. Rule 63.2(c) establishes the time for filing such a petition. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

The Categories

SB 960 makes sweeping changes in many aspects of the Commission's practices in an effort to improve the quality and timeliness of Commission decision making. It creates three categories of proceedings: adjudicatory, ratesetting, and quasi-legislative. The applicability of many of the changes it requires depends upon the category assigned to

the proceeding. For example, the ex parte rules which apply differ if the proceeding is categorized as adjudicatory rather than quasi-legislative. The Legislature defined each of these procedural categories in Section 7 of SB 960. Consistent with these definitions, the rules provide that:

“‘Adjudicatory’ proceedings are: (1) enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission; and (2) complaints against regulated entities, including those complaints that challenge the accuracy of a bill, but excluding those complaints that challenge the reasonableness of rates or charges, past, present, or future.

“‘Ratesetting’ proceedings are proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). ‘Ratesetting’ proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future. For purposes of this Article, other proceedings may be categorized as ratesetting as described in Rule 6.1(c).

“‘Quasi-legislative’ proceedings are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.” (Rules 5(b), 5(c), and 5(d).)

Mixed or Unclear Category Proceedings

For a proceeding that may fall into more than one category, the rules allow parties to recommend that the Commission pick the most suitable category, or to recommend dividing the subject matter of the proceeding into different phases or one or more new proceedings, each with its own category. The rules provide that a proceeding that does not clearly fit into *any* of SB 960’s defined categories will be conducted under the rules applicable to the ratesetting category. As such a proceeding matures, the Commission may determine that the rules applicable to one of the other categories, or some hybrid of those rules, would be better suited to the proceeding.

As stated in D.97-06-071, ratesetting proceedings typically involve a mix of policymaking and factfinding relating to a particular public utility. Because proceedings that do not clearly fall within the adjudicatory or quasi-legislative categories likewise typically involve a mix of policymaking and factfinding, the ratesetting procedures are, in general, preferable for those proceedings.

Next Steps

As stated above, this preliminary determination of category is not appealable. Once interested parties have had an opportunity to respond to the initiating party's proposed category, the preliminary determination shall be confirmed or changed by Assigned Commissioner's Ruling pursuant to Rule 6(a)(3). This Assigned Commissioner Ruling may be appealed to the full Commission pursuant to Rule 6.4(a). Parties have 10 days after the ruling is mailed to appeal. Responses to the appeal are allowed under Rule 6.4(b), and must be filed and served not later than 15 days after the ruling is mailed. The full Commission will consider the appeal.

Any party, or person or entity declaring an intention to become a party is entitled to petition for reassignment of the proceeding to another Administrative Law Judge, as described in Rule 63.2. Such a petition must be filed no later than 10 days after notice of the assignment. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

Conclusion

The Commission has reviewed the initial pleading of the utility applicants listed in the attached schedule and has made a preliminary determination of category and need for hearing, consistent with the requirements and definitions of Article 2.5 of its rules.

IT IS ORDERED that each proceeding listed in the attached schedule is preliminarily categorized, and the need for a hearing is noted.

ALJ/hkr

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on March 27, 2001, the following Commissioners voting favorably thereon:

/s/ WESLEY M. FRANKLIN

WESLEY M. FRANKLIN
Executive Director

LORETTA M. LYNCH
President

HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

**PRELIMINARY DETERMINATION
SCHEDULE**
Resolution ALJ 176-3060 (03/27/01)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A01-03-015 SKORO, IGOR, dba DALMATIAN SHUTTLE, for the authority to operate as a Passenger Stage Operation between points in San Francisco, San Mateo, Alameda, and Santa Clara Counties, on the one hand, and the San Francisco, San Jose and Oakland International Airports, on the other hand; and to Establish a Zone of Rate Freedom	Ratesetting	Ratesetting	NO
A01-03-016 ASEAN TELECOM, LLC, for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
A01-03-017 DYNEGY, for Application for Rehearing of Resolution L-293	*	*	*
A01-03-018 MIRANT AMERICAS ENERGY MARKETING, LP, and Related Entities, for Rehearing of Resolution L-293	*	*	*
A01-03-019 BUSINESS TELECOM, INC., for Approval of an Indirect Transfer of Control of Business Telecom, Inc. (U-5560-C)	Ratesetting	Ratesetting	NO
A01-03-020 SAN DIEGO GAS & ELECTRIC COMPANY, for Authority Pursuant to Public Utilities Code Section 851 to Exchange Radio Frequencies and Equipment	Ratesetting	Ratesetting	NO
A01-03-022 JON AND KATHERINE FRAZIER, PACIFIC GAS AND ELECTRIC COMPANY, for an Order Authorizing the former to Lease to the latter a Certain Parcel of Land in Amador County Pursuant to Public Utilities Code Section 851	Ratesetting	Ratesetting	NO
A01-03-024 TRI-M COMMUNICATIONS, INC., dba TMC COMMUNICATIONS, (U-5928-C) for a Certificate of Public Convenience and Necessity to Provide Facilities-Based and Resold Local Exchange Services within California	Ratesetting	Ratesetting	NO

*Application for Rehearing of Resolution is assigned to Legal Division. Categorization/Need for Hearing will be addressed as necessary if the Commission subsequently grants rehearing.

**PRELIMINARY DETERMINATION
SCHEDULE**
Resolution ALJ 176-3060 (03/27/01)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A01-03-025 CLARITI TELECOM, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
A01-03-026 PACIFICORP, (U-901-E), for an Order Authorizing an Immediate Interim Rate Increase, Subject to Refund and for Consideration of a Rate Stabilization Plan	Ratesetting	Ratesetting	YES
A01-03-030 VESTA TELECOMMUNICATIONS, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
A01-03-031 SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, for an order authorizing construction of an at-grade pedestrian crossing southwest of Parkmoor Avenue (82D-4.7) by the light rail transit line of the Vasona Light Rail Project in the City of San Jose, County of Santa Clara	Ratesetting	Ratesetting	NO
A01-03-032 SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, for an order authorizing construction of an at-grade crossing of Lincoln Avenue (82D-4.3) by the light rail transit line of the Vasona Light Rail Project in the City of San Jose, County of Santa Clara	Ratesetting	Ratesetting	NO
A01-03-033 WEST END COMMUNICATIONS INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
A01-03-034 SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, for an order authorizing construction of an at-grade crossing of the Woz Way/West San Carlos Street Intersection (82D-2.5) by the light rail transit line of the Vasona Light Rail Project in the City of San Jose, County of Santa Clara	Ratesetting	Ratesetting	NO

ALJ/hkr

**PRELIMINARY DETERMINATION
SCHEDULE**
Resolution ALJ 176-3060 (03/27/01)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A01-03-035 TGEC COMMUNICATIONS CO., LLC, for a Certificate of Public Convenience and Necessity to Operate as a Provider of Facilities-Based Local Exchange Telecommunications Service within the State of California	Ratesetting	Ratesetting	NO